

### Transnational cooperation in business and human rights: a model for analysing and managing NHRI networks

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# Transnational Cooperation in Business and Human Rights

A model for analysing and managing  
NHRI networks

Christopher Schuller / Deniz Utlu



German Institute  
for Human Rights



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## Imprint

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Study

# Transnational Cooperation in Business and Human Rights

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Christopher Schuller / Deniz Utlu



German Institute  
for Human Rights

## Abstract

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The paper presents the state of the art of cooperation among National Human Rights Institutions (NHRIs) within the area of business and human rights and highlights perspectives for further development. The results are drawn from consultations with NHRIs and regional NHRI network secretariats in Africa, Latin America, and Asia. In addition to providing practical guidance, the paper develops a model for a general network strategy adapted to the needs of NHRIs and dealing with transnational business and human rights issues. Managing cooperation among NHRIs as well as with external stakeholders requires addressing three dimensions: understanding, legitimacy, and the system of access to resources. Three fields of action correspond to these dimensions: communication, requests/sanctioning, and mutual undertakings/influence. Focal points, bodies of cooperation, and individual officers need to take into consideration that cooperation on a specific issue not only affects the overall cooperation structure, but also has repercussions for other issues and the relationship with external stakeholders.



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# 1

## NHRIs as a network

### 1.1 Introduction

The primary aim of the model for network analysis and management developed in this paper is to support and encourage NHRIs to jointly approach business and human rights issues. Nevertheless, the model itself can be varied and applied to the strategic planning of network action in general. It is based on consultations with sister institutions (see Consultations page 40) and on concepts of organizational studies. However, the primary target group of this paper is the extant "bodies" of NHRI cooperation in this field such as regional secretariats or business and human rights focal points in individual NHRIs, summarized and commented in Table 1.

The second target group is department heads and NHRI directors, since it is they who often decide on the allocation of resources, a crucial aspect of cooperation. Additionally, the network model presented in this paper can be useful for any global network that is engaged in business and human rights issues, including civil society organizations.

The German Institute for Human Rights (DIMR) conducted consultations with NHRIs in Africa, Latin America, and Asia from November 2013 to April 2014, with the goal of identifying structures for and deficits in NHRI cooperation in the field of business and human rights. During these consultations, it became clear that a transnational NHRI cooperation strategy is needed to bundle resources that are already being leveraged in the area of business and human rights.

#### 1.1.1 Why NHRI cooperation?

The transnational character of business and the national character of NHRIs mirror the international division of labor and the transnationalization of value and supply chains. Cooperation in this field is particularly important, since the globalization of corporate action can be associated with an increase in business-related human rights problems with transnational elements.

There are several examples of corporate and government actions that may lead to severe human rights violations linked to the transnational character of business: e.g. destruction of livelihoods through extractive industries and infrastructure projects, oppression of social protest through both governmental and non-governmental violence, privatization of public services that for instance may have impacts on vulnerable groups,<sup>1</sup> or violation of labour rights in the garment and agricultural industries.

A study by the European Center for Constitutional and Human Rights (ECCHR) illustrates several risks with cases from Latin America.<sup>2</sup> Human rights risks in the extractive industries and in infrastructure projects include disregard for the right of local communities, particularly of indigenous peoples, to participate in decision making through free, prior and informed consent (UNDRIP Art. 10) and the principles of consultation and participation of "indigenous and tribal peoples" (ILO Convention No. 169). Furthermore, such projects may put land rights at risk, e.g., as the ECCHR study illustrates it, of peasant communities in Peru who lost their land to Rio Blanco Copper S.A., which was

- 1 Ireland, for example, passed an act in 2013 that led to the privatization of the water supply, which had a negative impact on the access to water of Roma people. See: Austerity and Human Rights in Europe – Perspectives and Viewpoints from Conferences in Brussels and Berlin 12 and 13 June 2013, p. 14, (DIMR, April 2014) [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Austerity\\_and\\_Human\\_Rights\\_in\\_Europe.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Austerity_and_Human_Rights_in_Europe.pdf)
- 2 M. Saage-Maaß, C. Müller-Hoff, Transnationale Unternehmen in Lateinamerika: Gefahr für die Menschenrechte?, (ECCHR, April 2011): [http://www.ecchr.de/publikationen\\_wirtschaft\\_und\\_mr/articles/transnationale-unternehmen-in-lateinamerika.html](http://www.ecchr.de/publikationen_wirtschaft_und_mr/articles/transnationale-unternehmen-in-lateinamerika.html)

formed by the British company Monterrico Metals and the Chinese firm Zijin Mining Group Ltd.<sup>3</sup> The risks go beyond natural resources and include religious places of worship, jeopardizing not only the right to adequate food (ICESCR Art. 11.1) but also cultural rights (ICCPR Art. 27, ICESCR Art. 15). Other examples are forced displacements in Colombia, the denial of access to water and the violation of “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health” (ICESCR Art. 12.1) in Peru because of heavy metal poisoning close to a smelter of the US company Doe Run and a quicksilver accident in a gold mine in Cajamarca. Other cases of severe human rights violations include those caused either by private security companies or government agents instructed by local subsidiaries of transnational corporations or directly supported by them.<sup>4</sup>

Under international law, the obligation to protect human rights is primarily a duty of the national state. However, this national character of the human rights protection system cannot always respond adequately to violations that occur in a transnational context. Furthermore, there is often a responsibility gap between the transnational company and its subsidiaries or other companies in its value chains. In some cases governments are unwilling or unable to protect human rights within their jurisdiction. Hence, victims may face situations where there is no protection system at all.

In order to improve the protection of human rights and to lower barriers to justice of victims of violations in a transnational context, an actor is needed that is grounded in the national character of the human rights protection system but at the same time has the capacity for transnational action. NHRIs as a network are capable of being that actor: they have the competen-

cy for the domestic promotion and protection of human rights as stated in the Paris Principles,<sup>5</sup> and they are regionally and internationally linked with each other through regional secretariats, such as the European Network of National Human Rights Institutions (ENNHRI), as well as through the International Coordinating Committee of National Human Rights Institutions (ICC). Additionally, the diversity of institutional backgrounds and regional expertise among NHRIs opens the door to creative solutions and unlocks hidden potential: NHRIs are diverse in their mandates, structures, and size. Through cooperation, all NHRIs in all regions could improve their work and profit equally from a cooperative approach to business and human rights. However, the different historic circumstances of each region or even each country have to be reflected in the structures, methods, and aims of the cooperation.

All NHRIs are united in their purpose to protect and promote human rights as defined in the Paris Principles. Nevertheless, in their approaches to reach this common goal they might have diverse and sometimes even contradictory interests. For instance, the power to set rules for international trade, investment, and finance is asymmetrically distributed, are the legacies of colonialism partly responsible for the north-south dichotomy. Therefore, transnational NHRI cooperation should ensure that human rights are not instrumentalized to exclude countries from world trade, since the socio-economic effect of such exclusion may too have negative human rights impacts.<sup>6</sup> Another example is access to justice for host state citizens in courts of home states of companies with transnational activity. Some argue that the demand for such access is itself paternalistic and neocolonial, since it implies that the courts in host states are not developed enough to han-

3 Rio Blanco: Massive copper project proposed for Cloud Forest, (Oxfam: April 2009): <http://www.oxfamamerica.org/explore/stories/rio-blanco-massive-copper-project-proposed-for-cloud-forest/>

4 See Esther Kiobel et al., *Petitioners v. Royal Dutch Petroleum Co. et al.*, Respondents, German Institute for Human Rights Supplemental Brief of Amici Curiae, German Institute for Human Rights and international law experts in support of petitioners: <http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/article/rechtsstreit-kiobel-versus-shell-verpasste-chance-zur-staerkung-zivil-gerichtlicher-hilfe-bei-schw.html>

5 Principles relating to the Status of National Institutions (The Paris Principles). Adopted by General Assembly resolution 48/134 of 20 December 1993: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

6 This topic will be issued by DIMR in future. The discussion about trade sanctions with the purpose to push governments to human rights compliance is an important strand of the debates that lead the business and human rights movement to where it is today. However, those sanctions may also have negative impacts on human rights, since harm, caused by the exclusion from trade, may be shifted to the population that should have been protected by the sanction. Additionally, both sanctions and campaigns can have negative impacts on the population if the demand drops for products from countries with high human rights risks, for instance European demand for textiles from Bangladesh. Local communities may only be protected if the impacts of trade policy and civil society campaigns in the global north that target countries in the global south are well assessed. This could be ensured through the cooperation of the NHRIs in the region where the policy (campaign, sanction, etc.) is designed and the NHRIs in region that is targeted. For the different strands of debate in business and human rights see: Michael Windfuhr, *Wirtschaft und Menschenrechte als Anwendungsfall extraterritorialer Staatenpflichten*, Zeitschrift für Menschenrechte, Jhrg. 6 2012, Nr. 2, Wochenschau Verlag.

dle the complaints of victims of corporate human rights violations. NHRIs should be able not only to identify the violation of a human right but also the source of the violation and who it is that benefits from the process in which it occurred: If a value chain is structured in a way that the human rights violation and the accumulation of wealth occur in different countries, it can be appropriate to ask for remedy in the country where wealth is accumulated. Only in cooperation and with a sensibility for asymmetric distributions of power will NHRIs be able to identify the perpetrators and beneficiaries of human rights violations and to promote the access to justice for victims.

Collaboration enables national institutions to establish common routines utilizing synergy effects and to orchestrate their voices in order to gain more legitimacy and leverage to fill the responsibility gap between a national protection system and transnational root causes of human rights risk. Strong regional secretariats and, on the international level, a strong ICC help to use resources effectively, moderate information exchange, and manage the cooperation process in a way that is mutually beneficial for the institutions and strengthens their capacity to monitor international business and contribute to a better protection system against the types of violations described above.

### 1.1.2 The mandate of NHRIs to cooperate in the field of business and human rights

The mandate of NHRIs to address business and human rights issues has been affirmed in 2011 by the UN Guiding Principles on Business and Human Rights (UNGPs), the UN Human Rights Council in its resolution 17/4 endorsing the UNGPs, and by NHRIs themselves in the ICC's 2010 Edinburgh Declaration<sup>7</sup> and in four subsequently concluded NHRI regional action plans.<sup>8</sup> In the years following the Edinburgh Declara-

tion there has been a wide range of NHRI action in this field.<sup>9</sup>

In the commentary to UNGP 3 on general state regulatory and policy functions, the UNGPs state that "National human rights institutions that comply with the Paris Principles have an important role to play in helping States identify whether relevant laws are aligned with their human rights obligations and are being effectively enforced, and in providing guidance on human rights also to business enterprises and other non-State actors."<sup>10</sup> To do so effectively in a transnationally structured context, NHRIs must also be able to operate transnationally. The development of methods and procedures for monitoring, exchange, and cooperation in assessing and addressing the human rights impacts of business activity is thus a critical task for NHRIs.

### 1.1.3 The necessity of a transnational NHRI strategy

An ENNHRI survey from 2013 asked members to "consider various work streams of the European Group of NHRIs over the last 15 years". The survey shows that members found the work of the network generally useful, but noted that "activities could be more structured, planned more strategically, have more representative participation, and be better communicated to both members and external stakeholders."<sup>11</sup> This paper delivers a conceptual framework which will help to plan the structure of cooperation and the interactions of NHRIs more strategically. The framework builds on network analysis in organization studies, especially the theory of structuration, which regards structures and actions equally. Theoretical frameworks for network research are numerous.<sup>12</sup> However, this study is designed to take structure and agency equally into account.

7 International Co-ordinating Committee of National Institutions for the promotion and protection of Human Rights (ICC), The Edinburgh Declaration, Edinburgh, 2010; [http://scottishhumanrights.com/application/resources/documents/ENG\\_Sep\\_2010\\_Edinburgh\\_Declaration\\_FINAL\\_101010\\_1417h.doc](http://scottishhumanrights.com/application/resources/documents/ENG_Sep_2010_Edinburgh_Declaration_FINAL_101010_1417h.doc).

8 See the ICC webpage for Business and Human Rights: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.aspx>.

9 Further information on the Role of National Human Rights Institutions in Business and Human Rights see: Deutsches Institut für Menschenrechte, Business and Human Rights – The Role of National Human Rights Institutions (DIMR, August 2014): [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Documentation\\_Business\\_and\\_Human\\_Rights\\_The\\_Role\\_of\\_NHRI.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Documentation_Business_and_Human_Rights_The_Role_of_NHRI.pdf) (PDF, 360 KB).

10 John Ruggie, the Special Representative of the Secretary General (SRSG) on the issue of human rights and transnational corporations and other business enterprises, UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31, March 2011, accentuation by authors.

11 Report on the Membership Survey for Strategic Planning – ENNHRI, October 2013.

12 Other approaches of network theory can be found in Jörg Sydow, Strategische Netzwerke, Evolution und Organisation, (Wiesbaden: Gabler, 1995). This paper's framework is based primarily on the „structuration theory“ of the sociologist Anthony Giddens, firstly because both, the structure of the network and the action of its agents, are taken equally into account, secondly, network is regarded as changing in time, complex, but not deterministic.

The outcomes of this study are summarized in three tables. They build on each other but can be used independently:

- Table 1: Existing bodies of NHRI cooperation structures, page 14
- Table 2: Model of NHRI cooperation, page 28
- Table 3: Possible further steps for transnational NHRI cooperation, page 31

## 1.2 Developing a network

In order to decrease human rights violations in the context of business and to simplify the access to justice for victims, a number of operational goals can be identified:

- 1 Increasing the institutional capacity of NHRIs: For instance, through providing training. In this respect, crucial areas are transnational monitoring of businesses, reporting to international mechanisms and complaint handling, awareness-raising for human rights, and exchange of best practices on routines and procedures. Cooperation should further support the development and accreditation of new NHRIs.
- 2 Building strong and sustainable regional secretariats as well as international coordination within the ICC: crucial aspects are the development of an effective communication strategy, relationship-building with external stakeholders, management of NHRI cooperation, and the development of a funding strategy.
- 3 Awareness-raising for the promotion and protection of human rights: this includes offering workshops and trainings for government officials, business representatives, and other stakeholders as well as joint intervention in international political processes.

4 Common regional and international engagement: NHRIs forming a regional or even an internationally orchestrated voice is of high value for communicating with stakeholders, influencing policies, and sanctioning perpetrators of violations since stakeholders in the area of business and human rights often think and operate on a transnational scale. Engagement can include common policy making initiatives and common statements on human rights issues, supporting joint litigation initiatives, coordinating human rights impact assessments, and joint lobby initiatives.

Cooperation in networks needs to take several important aspects into account:<sup>13</sup>

- **Structure-action relationship.** The structure of the network and the (inter)action of its entities – individual NHRIs – are interdependent. Whether and how existing structures are used depends on the individual officers. An interaction only arises if they decide to use certain existing structures. In other cases, no formal structures exist, but the officer's decision to cooperate gives rise to the development of new structures. A group of European NHRIs, for example, submitted recommendations to the OECD<sup>14</sup> and to the European Bank for Reconstruction and Development (EBRD). The Danish Institute for Human Rights took initiative and asked the German Institute for Human Rights and the French Commission Nationale Consultative de Droits de l'Homme to contribute to a civil society consultation of the OECD on export promotion in November 2013. Firstly, this had the effect that an informal NHRI working group was built that exchanged ideas on export credit agencies and regulating mechanisms such as the "common approaches"<sup>15</sup> or the International Finance Cooperation Performance Standards (IFC PS). Thus, with the initiative of the agents to take action a structure emerged that might as well be used for other issues. Secondly, a structure that was not meant for NHRI action, since only civil society organizations were asked for contributions, could be utilized to feed in NHRI positions into the procedure. However, in other cases

13 See Jörg Sydow, *Strategische Netzwerke, Evolution und Organisation*, (Wiesbaden: Gabler, 1995), especially 300ff. For the „structure-action-relationship" and the „unintended effects", see the concepts „Duality of Structure" and „the stratification model of the agent" in Giddens 1984. *The constitution of society: Outline of the theory of structuration*. Cambridge: Polity Press.

14 See also DIMR, *Menschenrechtliche Risikostandards im System der Außenwirtschaftsförderung*, 2013.

15 Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches"), as adopted by the OECD Council on Thursday 28 June 2012, <http://www.oecd.org/tad/xc/red/oecd-recommendations.htm>

structures might exist formally but remain dormant as long as they are not activated by agents.

- **The network of NHRIs as a process.** Networks are dynamic entities. The capacity of individual NHRIs to act in the field of business and human rights and to interact with each other may change in time and may be different in each region. However, if structures are increasingly used for interaction and if interaction establishes a pattern of cooperation, there will be more capacity in total to act and to respond to businesses and governments. Nevertheless, the process might not be linear and can even have regressive phases.
- **Unintended effects.** It is not possible for every officer to always be aware of the whole context and conditions of his or her action. Thus, any action will have unintended effects that sometimes have an influence on the strategy of the whole network and can change the structures. Consequently, the direction of the network as a process is not always fully controllable.
- **Communication.** The effectiveness of communication between individual NHRIs and with other actors is dependent on a common "agreed" language and shared knowledge both of the field of business and human rights and the context of action of each NHRI.
- **Legitimacy.** NHRIs' interactions with one another and with other actors can be legitimated or framed by norms. These might take the form of e.g. memoranda of understanding for bi- or multilateral cooperation among NHRIs or with other organizations such as the OECD. Such agreements frame the scope of the cooperation and legitimize joint activities under their auspices. Norms can also come in the form of relevant laws calling for or governing NHRIs' interaction with other stakeholders: business, government, or victims of human rights violations. An NHRI might be legally empowered or legally obligated to report to or consult with these groups, and can leverage this convening power for its activities.
- **Resources.** Resources in terms of staff and budget are limited. At the same time, cooperative (inter) action as well as the level of influence that the network will have in the field of business and human rights are dependent on those resources, since it is not possible to conduct any project, be it capacity building, research or policy advisory, without staff or budget.

## 2

# Current NHRI cooperation

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Table 1 gives an overview of the existing bodies of NHRI cooperation, their respective advantages for the work of the NHRIs, and future perspectives for the development of these structures. There are three kinds of cooperation identified in the table: institutionalized cooperation within the ICC, regional and international networks, and occasional bi- or multilateral cooperation.

NHRI cooperation bodies are entities within the NHRI network which continuously organize and facilitate mutual undertakings of two or more NHRIs, their communication with each other, and possible requests that they can propose to one another. In some cases these bodies are secretariats with their own staff members, such as the regional and sub-regional secretariats. In other cases, those entities may also be a list of officers or persist of the informal exchange of officers in different sister institutions. In order to ensure that those diverse cooperation bodies work together in a manner that leads to an effective handling of human rights issues (see 1.1.1) through NHRI action, each cooperation body should be strengthened and their interaction should be strategically framed. The next section develops a model for such a strategic framing of NHRI structures and action with a focus on corporate human rights violations.

Table 1: Existing bodies or NHRI cooperation structures

Cooperation bodies	Description	Strengths and advantages	Future perspectives
ICC Working Group on Business and Human Rights	The ICC working group is a subset of ICC members, two from each region, that serve as regional coordinators and representatives in international organizations and inter-NHRI discussions in the field of business and human rights.	The working group comprises a list of pre-identified experts at NHRIs with developed capacity in this field that work particularly well for representing the interests of the ICC and its members to other international organizations.	The centralized infrastructure of the working group should be strengthened, ensuring that its elected chairman receives central support with things such as keeping the communications platforms of the ICC current and accessible to all ICC members.
ICC 'Focal Points'	The ICC focal points are officers in each NHRI working in the field of business and human rights. Many NHRIs have more than one such officer, in which case the focal point serves as a point of first contact for queries from sister institutions.	The focal points strengthen cooperation by giving sister NHRIs a name and a face. They know their own organizations well enough to forward the query to the appropriate person. A direct and designated contact can not only facilitate more rapid and effective cooperation, but also maintains an overview of the scope and relative success of his or her institution's transnational cooperation.	ICC focal points for business and human rights should be expanded to cover all NHRIs. Focal points could develop a common monitoring or tracking mechanism such as a database of international corporations.
Regional NHRI network secretariats NANHRI, NHRIs in the Americas, APF, ENNHRI, Sub-Regional-Secretariats: SEANF	The regional NHRI networks, e.g. ENNHRI in Europe and NANHRI in Africa, perform a similar role to the ICC in the exchange of policy <sup>16</sup> and the development of strategy with a particular regional focus. They, too, can have working groups or thematic subcommittees.	Regional NHRI networks represent the interests and perspective of NHRIs before regional supranational organizations, and serve as a forum for NHRIs to exchange views and information on problems which, though they might extend outside the borders of individual NHRIs' states, still have a particular regional focus or commonality.	Both the infrastructure of the regional networks themselves plus the cooperation at the regional-network level needs to be strengthened. Where multiple regional networks have working groups on the same theme, e.g. business and human rights, these should be able to cooperate directly.

Cooperation bodies	Description	Strengths and advantages	Future perspectives
International networks Francophone Association of NHRIs (AFCNDH), Network of NHRIs in Portuguese speaking countries, The Commonwealth Forum of National Human Rights Institutions	International cooperation networks often develop according to historical ties and joint geopolitical interests (e.g. Commonwealth Forum, AFCNDH). The focus of these often loose networks is on the exchange of information and strategies as well as the spread of best practices.	International networks facilitate exchange beyond regional borders. Therefore, new ideas and strategies from different contexts help inspire future NHRI action. Networks bridging the north-south divide are particularly crucial as they can contribute to an effective management of cases involving transnational corporation.	International networks are quite heterogeneous in character, scope, and level of institutionalization. Strengthening cooperation in these networks should aim at the harmonization of standards and common "agreed" language to effectively manage their interaction.
Direct bi- or multi-lateral cooperation between NHRIs (More than 100 individual NHRIs, 69 accredited as fully compliant with the Paris Principles)	It is often possible for individual NHRIs to collaborate directly, particularly on cases that involve one of their countries as the home and one as the host state, when a case involves a national of one state working in another, or when one NHRI requires specific information about the situation in another country.	Personal relationships can provide an extremely efficient basis for cooperation. Important information concerning specific cases or organizations can be exchanged quickly.	Instances of bilateral cooperation should be kept track of so that other NHRIs can benefit from the information collected as well as from examples of good practices.

16 By "exchange of policy" we mean the transfer of political knowledge between sister institutions and the exchange of experiences from interventions into political processes: for instance, is it important to know how sister institutions lobbied for a NAP, what barriers they faced, and how they dealt with those barriers.



## 3

# The NHRI network model

### 3.1 Interaction within the NHRI network

NHRIs cooperate with one another in the field of business and human rights, primarily because they seek to prevent and decrease corporate human rights violations and to improve victim's access to justice. The action of the network can be regarded as the combination of individual and cooperative NHRI actions. How does the network or its members communicate with stakeholders? What legitimacy for sanctions of other stakeholders does the network have? What resources increase the network's influence in its interactions with stakeholders?

Since the network's action depends on the actions of its members, it is not possible to control the network as such. Only through the structuring of the interactions of its members – of individual NHRIs – is it possible to develop a common ground of agency. The modalities of such an interaction of individual NHRIs are presented in Table 2 below. NHRI interaction can be divided in three analytical dimensions of action:

- 1 Communication among individual NHRIs
- 2 Requests that individual NHRIs can legitimately make of one another
- 3 Mutual undertakings/joint utilizations

Table 2 illustrates the basis on which inter-NHRI communication functions, what legitimates NHRI requests made of one another, and the resources they can use as a basis for mutual undertakings. The three dimensions of action are recursively linked with three dimensions of structure – “understanding” (as rules of communication), “legitimacy”, and “access to resources”.

**Communication.** To communicate with each other effectively NHRIs need to have

- a shared knowledge of the field of business and human rights;

- a common understanding of the mission, goals, and procedures of a NHRI, but also an understanding of the difference and diverse point of views of NHRIs in different contexts, e.g. NHRIs in home- or host-, low-income or high-income countries;
- an awareness of the possibilities and consequences of action;
- an agreed language on the field of action, risks, possibilities, and boundaries.

Officers can refer to those modalities of communication when approaching sister institutions. There must be space for debates and discussions, e.g. concerning the role of NHRIs in business and human rights or concerning strategic time frames and long term goals.

**Requests.** To being able to make meaningful and legitimate requests of one another, NHRIs need a set of common rules and norms. Regarding cooperation in the field of business and human rights, these are, among others, the Edinburgh Declaration and the four subsequent regional declarations. Further, memoranda of understanding (MOUs) and contracts of cooperation that do not primarily relate to business and human rights can be used to cooperate in this field. An MOU on general capacity building therefore could also serve as the basis for capacity building on business related issues. Requests themselves can also lead to a higher legitimacy of NHRI operations among sister institutions: transnational networks operate at the regional level to confer legitimacy in the form of evaluation by peer review. A good example of this is the a peer review mechanism available within the Asia Pacific Forum (APF). The APF, created in 1996 with the support of the UN and spearheaded by the Australian Commission, administers its own evaluation—according to the Paris Principles—of prospective and current members separately, but in cooperation with, the ICC. The peer-review mechanisms serve NHRIs to evaluate their performance among each other and, thus, to confer legitimacy. This in turn contributes to mutual recog-

dition and facilitates the institutionalization of cooperation. There is some evidence that firmly established transnational networks, devised by NHRIs themselves, play a major role in the diffusion of NHRIs.<sup>17</sup>

**Mutual undertakings/joint utilizations.** For mutual undertakings NHRIs use resources in terms of human and financial capital, travel costs, rents for conference halls, staff, etc. Furthermore, the mere existence of those resources is not enough, as officers also must be able to use those resources in a way that enables network activities. This in turn depends on his or her capacity, the accessibility of resources, and the routines of cooperation within the network. Nevertheless, cooperation not only uses up resources, but also generates them: e.g. cost sharing, synergies such as computer software programs for complaint handling or online learning tools, which can be jointly utilized. On the level of staff, the exchange of expertise will contribute to capacity-building.

In short, NHRI cooperation becomes possible when officers use a given set of rules and resources on the basis of a common understanding (structures), refer to common norms, and invest time and financial facilities (modalities) in order to communicate, request and perform mutual undertakings (action). The dimensions of action are all connected with each other: without effective communication no requests are possible and there won't be any mutual undertakings.

This perspective on cooperation focuses on both the individual officer as well as the general structures of understanding, legitimacy and resources (see table 2). On the one hand it shows that rules and resources are not relevant if not referred to and adequately applied by the officers. On the other hand, rules and resources determine the modalities that enable officers to act. Through their actions, they interpret the rules, negotiate new understanding and reallocate resources so that the structural preconditions change. This model has the purpose to help NHRIs to design a general network strategy in the field of business and human rights and to identify the necessary steps towards a coherent network action. During the DIMR consultations on transnational NHRI cooperation, the following areas of cooperation were identified for the interaction within in the NHRI network:

- Joint development of standards and methods concerning human rights risk analysis (HRRRA) and human rights impact assessment (HRIA);
- Exchange of information between NHRIs in the home state of a business and the host state:
- Policy Exchange<sup>18</sup>
- National Action Plans
- Joint management of complaint processes
- Training and capacity-building on the protection of human rights within business-related activities particularly for state-owned corporations:

Those areas of cooperation are related to the dimensions of structure and action as described above:

- 1 Understanding – Communication
- 2 Legitimacy – Requests
- 3 Access to Resources – Mutual Undertakings/ Joint utilizations

Once areas of cooperation are related to the interdependency of structure and action, the NHRI bodies of cooperation – the ICC, regional secretariats, business and human rights focal points (see Table 1) – will be able to identify more precisely which actions and interactions are required for improving work in each area and which structures need to be monitored and eventually adjusted. Since this model highlights the processes more than punctual interventions, it will help to establish continuous work flows at each area. Doing so, it will help to avoid the sporadic character of emerging networks that lack a management system. In what follows, the areas of cooperation are set into relationship with each axis of the structure-action-duality. The thematic contents of each area will only be briefly introduced. Further, the details of the model will only be explained on the basis of one area of cooperation, since the mechanism is similar across all areas.

### 3.1.1 Structure-action duality

"Structures", defined as rules and available resources and "action", defined as the interactions of officers with each other are equally important for building a network strategy, because structure and action are reciprocally related to one another: Officers change structures while using them and structures both restrict and facilitate action. The sociologist Anthony

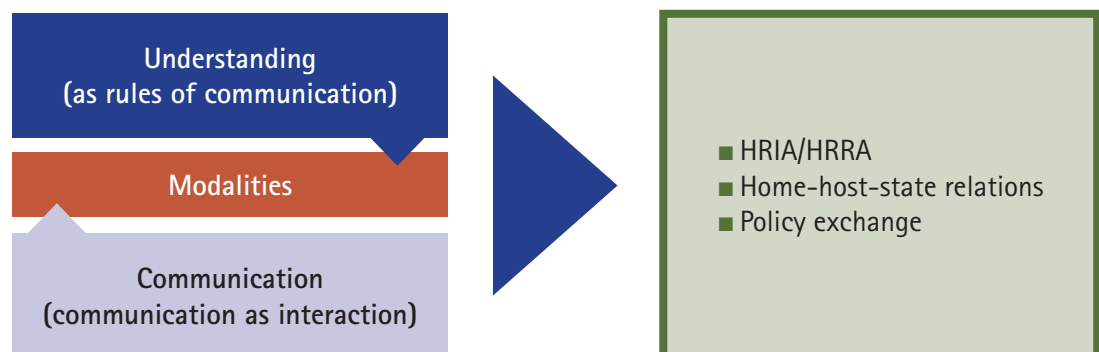
17 Thomas Pagram, 'Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions' (2010) 32 Human Rights Quarterly 741: "NHRI diffusion has occurred not only through organizational platforms but also via transnational networks, devised by NHRIs themselves. The transnational networks operate at the regional level to facilitate information exchange among offices, and also in some cases, to confer legitimacy in the form of peer review mechanisms of evaluation. The degree of NHRI interaction within different arenas varies from region to region"

18 See footnote 16.

Giddens calls this reciprocal relation "the duality of structure and action" in opposition to a dualism in traditional concepts of social theory<sup>19</sup> In trying to overcome such a "dualism" Giddens synthesizes theoretical approaches, such as positivism, functionalism and evolutionism. In organizational studies Jörg Sydow, for instance, applies the concept of "duality" to organizational networks, especially in sectors that are highly knowledge-based and dependent on expertise, such as financial services.<sup>20</sup> Based on Giddens and Sydow the model in this paper will, as mentioned, analytically distinguish three dimensions of structure: "understanding", "legitimacy", "system of access to resources"<sup>21</sup>. Each dimension of structure corresponds with a dimension of action: "communication", "requests", "mutual understandings/joint utilization"<sup>22</sup>. For any action,

agents rely on a given structure and recursively change the structure while taking action: e.g., officers have to interpret rules of understanding within the network for being able to communicate with each other. At the same time the rules of understanding change while communicating. NHRIs from different regions may for example allude to different implicit definitions of human rights, the purpose of business, civil society, etc., while communicating they will adapt, thus change their definitions without necessarily aiming to do so. Thus, action sometimes unintentionally effect the structure. An eloquent model for a network strategy, will influence this mechanism in a way that it serves the purpose of the cooperation. In the following section, different areas of cooperation will be related to the structure-action duality.

### 3.1.2 Understanding – communication



#### Structure–action duality and the areas of cooperation within the network of NHRIs

Joint development of standards and methods concerning human rights risk analysis (HRRA) and human rights impact assessment (HRIA). Beyond the UN Guiding Principles on Business and Human Rights, there is very little international common ground on exactly what a human rights impact or risk assessment requires. In particular, there may be a discrepancy between the substantive human rights standards set out by the law in the home state and those in the host state. By cooperating on effective human rights assessments, the home-state NHRI and the host-state NHRI

can ensure that the scope is wide enough to cover human rights that are of particular concern to the host state, such as housing, land rights, labor rights, and the right to the maximum achievable standard of health. Another more conceptual question is the difference of HRRA and HRIA. Since the UNGP try to integrate human rights language with business concepts, a risk analysis is closer to a short-term corporate risk analysis than to a broader human rights impact assessment. However, there is a lack of broadly accepted standards regarding what such a risk analysis has to

19 On the one hand functional analysis, which does not take the interaction among agents into account sufficiently and evolutionary analysis, which regards any movement as deterministically path-dependent, and on the other hand symbolic interactionists that consider structures insufficiently, if at all. See Turner, J. H., "Review Essay: The Theory of Structuration", *American Journal of Sociology*, Vol. 91, Number 4, 1986.

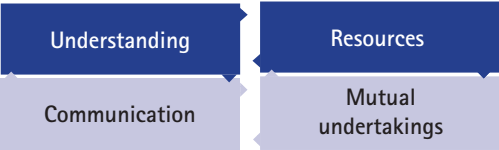
20 See Sydow, J., 'Wissensintensiv durch Netzwerkorganisation – Strukturierungstheoretische Analyse eines wissensintensiven Netzwerkes' in Jörg Sydow (ed.), *Management von Netzwerkorganisationen – Beiträge aus der „Managementforschung“*, Vol. 5 (Wiesbaden: Gabler, 2010).

21 We differ here from Giddens' terminology in order to make his concept practical for NHRIs. The structure dimensions in the duality of structure are called signification, legitimation and domination.

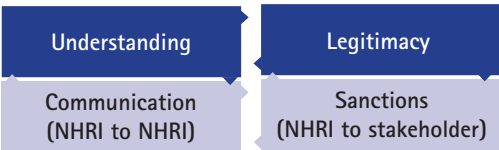
22 Again analogous to Giddens terminology: communication, power, sanctioning.

look like. Certainly it differs from financial risk analysis since its main purpose is not primarily in favor of the returns on investment, which can be positively correlated with risks. A HRRAs should be an orientation for the company so that it knows which parts of its value chain are more likely to involve human rights violations.

**Related structure–action duality:** For joint standards and methods for HRRAs and HRIAs NHRI will have to share knowledge and develop an agreed language to establish a common understanding of what the purpose, content and utility of those standards will be in the context of the goals of the network as a whole. Only on the basis of such a common understanding an effective communication will be possible. However, structure and action, “understanding” and “communication” must happen simultaneously. While communicating the rules of communication will change. The NHRI cooperation bodies that engage with the development of concepts of HRRAs and HRIAs will have to take care that the common “understanding” develops in a way that serves the network goals. If they are not able to establish such an integrative process, negative effects on resources and legitimacy might be the consequence. For instance, if several NHRIs in different regions begin to develop concepts of HRRAs/HRIAs independently, this might waste resources such as staff time, who might be working on the same issue in parallel. This case shows that there is not only a relationship within the axes, such as “understanding” and “communication”, but also between the axes themselves:



Furthermore, the dimensions of structure and action within the network are related to the dimensions of the cooperation with stakeholders, which is described in what follows.



Conducting a HRRAs will consequently lead to a stakeholder engagement with businesses, civil society and potential victims. Since the design of the HRRAs and the way it is conducted has a direct impact on business decisions, it thus increases the influence of NHRIs in the business sphere (resource–influence duality). A HRRAs will cost resources, but may also open financial opportunities. However, the individual NHRI as well as the whole network has to ensure to stay independent, which again is a question of a mutual understanding and the legitimacy of the approach.

Cooperating NHRIs will have to decide on the basis of such an analysis, when and in what way to involve other cooperation bodies such as the ICC or regional secretariats. Any action, such as the development of HRRAs software or databases will bind resources, staff members, and come at the cost of other services.

**Exchange of information between the NHRIs in the home state of a business and the host state when human rights violations occur.** If a NHRI becomes involved in a case concerning human rights violations in the course of a transnational corporation’s business activity, they can contact the home-state NHRI. Faced with a specific incident or allegation of a human rights violation in which a transnational corporation is involved, the cooperation of NHRIs can adequately address case management. For the host-state NHRI, this can bring several advantages: The home-state NHRI may have experience dealing with this corporation, and can pass valuable insights to the host-state NHRI; the home-state NHRI may have contacts in the press and civil society in the home state which can give the host-state NHRI access to campaign and publicity measures in the home state, where the corporation might be much more sensitive to them; the home-state NHRI may be able to organize or put the host-state NHRI in touch with scientific and technical expertise in the home-state that is not available in the host-state. It can also have advantages for the home-state NHRI: Information passed from the host-state NHRI can flow into the home-state NHRI’s monitoring of its own country’s international business activities, or the home-state NHRI can decide whether to react separately to the human rights violation using procedures in the home state, e.g. a complaint to the OECD National Contact Point.

**Prevention of human rights violations through the exchange of information between the NHRIs in the home state of a business and the host state before human rights violations occur.** Even before a human rights violation occurs, and even if one never does, the host-state NHRI can contact the home-state NHRI immediately when a transnational corporation is moving in or proposes to move in. Contact can, for instance, be directed through the Business and Human Rights focal points. In this case, too, this will have a number of advantages for the host-state NHRIs: they can get background information about the transnational corporation involved; the home-state NHRI can give the host-state NHRI important contact information for the home-state civil society engaging with this transnational corporation; the host-state NHRI will already have established a relationship with an officer at the home-state NHRI in case the matter needs to be taken up again. It also has advantages for the home-state NHRI: the home-state NHRI learns about the activity or proposed activity, since these are rarely a matter of public record; more information means better monitoring and dialogue between the home-state NHRI and corporations based there; the home-state NHRI may require reliable information about business activities in host states for its own lobbying of national governments and supra- or international organizations.

**Related structure-action duality:** In both cases, information sharing after a human rights violation and before, it will be the individual officer of a certain NHRI, who will be in search for cooperation partners in the relevant countries. For being able to do so, the individual officer needs to act on basis of a common understanding of when to approach whom in a sister institution and what to expect from him or her. During the DIMR consultations on transnational NHRI cooperation officers from sister institutions mentioned cases where cooperation in home-state/host-state situations would have been helpful. The National Human Rights Council of Morocco (CNDH) reported that there had been a dispute between a German enterprise and union members in Morocco. The dispute was solved after the CNDH approached the German company's head office directly. However, an approach through the DIMR in advance

could have helped avoiding the dispute entirely. Even if officers from individual NHRIs can approach the business and human rights focal points in some cases, the system of cooperation has to be further elaborated: the focal points need resources in terms of time and staff to react to requests from sister institutions. Also, the cooperation should be institutionalized in a way that it is not fully dependent on the individual focal point officers. This means that a continual revision of all three axes of cooperation – understanding/communication, legitimacy/requests, and access to resources/mutual undertakings – is needed with regard to information sharing between NHRIs of host- and home-states. This revision might be part of the agenda of the ICC business and human rights working group meetings; regular focal point workshops can be organized and mailing lists can be established to keep relevant cooperation partners informed.

**Information exchange.** The exchange of information is not only relevant in the host-state/home-state environment. It is a core function of cooperation<sup>23</sup> and occurs through emails, internet surveys, and at meetings. Regional and international information exchange can support NHRIs in assessing whether specific policies such as regional environmental regulation, regulations on conflict minerals, migrant workers, fiscal and monetary policy, or export promotion meet the requirements of the key human rights standards. Information exchange is productive, and beneficial. It serves to inspire members, to learn from each other's work and to consider new ways to develop activities and programs. Exchange is the basis for orchestrated engagement with external stakeholders. Communication, however, needs systematic planning to avoid wasting resources and communication asymmetries in the network. This can be achieved through establishing a clear and visible framework, developing new platforms, like an internal database or intranet, and supporting institutional structures on a regional and international level.

**Policy exchange.** Human rights are usually not decisive for economic policy. However, in accordance with the 1993 Vienna Declaration, countries should give

23 For example 90 percent of participants in a survey of the European Network of National Human Rights Institutions indicated that they had been involved in information sharing through the European Group of NHRIs. See: European Network of National Human Rights Institutions. 2013. Situational Review for Strategic Planning. Paper prepared for the meeting of European Network of National Human Rights Institutions at the strategic planning meeting on 13 to 15 November 2013.

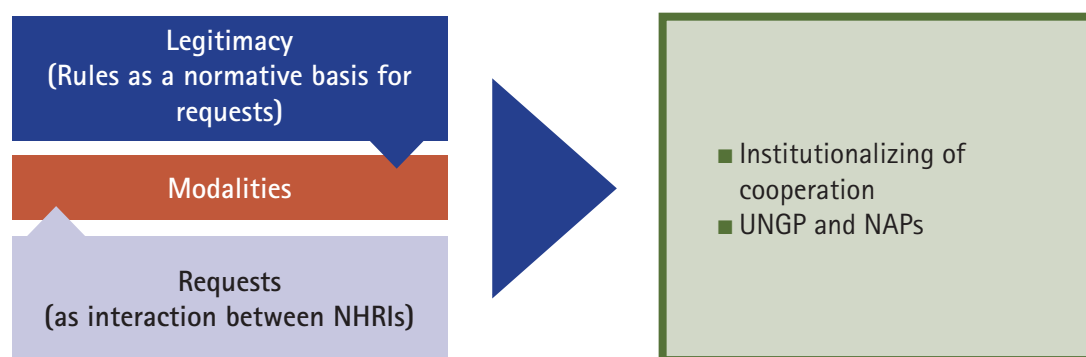
human rights the highest priority and in accordance with Art. 2.1. and General Comment Nr. 3 of the International Covenant on Economic, Social and Cultural Rights, countries must do their utmost to promote economic, social and cultural rights. Consequently, NHRIs need to develop methods for the comprehensive assessment of economic policies, including quantitative standards as well as qualitative examination of legislation and policy processes. Regular meetings are necessary to keep NHRIs updated on recent developments concerning human rights in the various national contexts and as a platform to ask for assistance or expertise on business and human rights issues and familiarize one another with the working methods of partner NHRIs. In order to conduct these meetings efficiently, they need a clear and transparent framework. Here, regional secretariats and the ICC need to provide for effective management of agenda and timing.

Example: The European Network of NHRI (ENNHRI) took a first step towards such a 'transnational human rights impact assessment' of supranational economic policy: In June 2013 the German Institute for Human Rights and ENNHRI held an event in Brussels on austerity measures and their impacts on human rights, inviting the Scottish Human Rights Commission (SHRC), the Irish Human Rights Commission (IHRC),

the Greek National Human Rights Commission (NHRC) and the Spanish Defensor del Pueblo. Those five European NHRIs discussed with NGOs and the UN Independent Expert the effects of foreign debt on economic, social and cultural rights and negative human rights impacts of austerity measures imposed upon some European countries by the European Central Bank, the European Commission, and the IMF.

**Related structure–action duality:** In the example above, the cooperation was established through the direct exchange of the directors of the NHRIs. One of them was able to facilitate financial resources for flights and accommodation. Individual cooperation agreements were signed, and the regional secretariat ENNHRI facilitated the room and invited relevant stakeholders in Brussels. An informal working group on austerity issues was established. In January 2014 an open letter to the EU, ECB, and IMF was formulated by three NHRIs and ENNHRI. However, policy exchange as an area of cooperation was not broadened to other policies. The regional secretariat could build on the established understanding/communication duality in the future when other issues are at stake.

### 3.1.3 Legitimacy – requests



#### Structure–action duality and the areas of cooperation within the network of NHRIs

Implementing the UN Guiding Principles on Business and Human Rights. The UNGPs mention NHRIs explicitly with their role to help states to identify whether their laws are aligned with international human rights

obligations. Businesses should consult them as external experts in particularly complex situations. Furthermore, NHRIs should play an important role in state-based non-judicial grievance mechanisms.

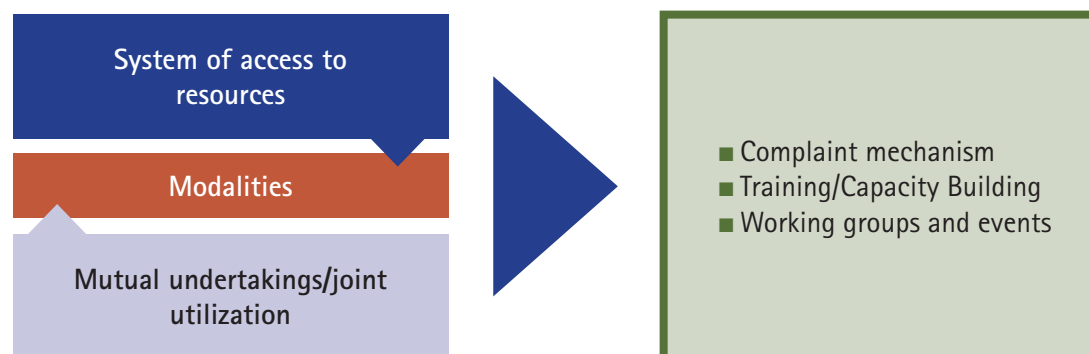
**Related structure–action duality:** The role of NHRIs as defined in the UNGPs and further developed in regional conferences, declarations and publications also provides legitimacy to requests between sister institutions, for example that NHRIs inform each other about scope, content and emphasis of their recommendations concerning NAPs. In some cases effective consultation with all involved stakeholders will only be possible through information sharing between host- and home-state NHRIs, which legitimates requests for information sharing.

between individual NHRIs or regional declarations. The ICC working group and the regional secretariats have become actors sustaining existing cooperation structures and facilitating their further development.

**Structure–action duality:** These bodies of cooperation also directly or indirectly influence the set of norms and rules governing cooperation in the field of business and human rights. International NHRI cooperation on the mission, character, and further direction of these institutions can ensure the complementarity of diverse regional initiatives so that inter-regional cooperation remains achievable and no major gap arises. Additionally, it can assure reciprocity so that cooperation within these institutions is at eye level and does not disadvantage certain NHRIs.

**Institutionalization of cooperation.** Internationally, within the ICC, and on a regional level, NHRI cooperation in the field of business and human rights is increasingly institutionalized, whether through MoUs

### 3.1.4 Access to resources – mutual undertakings/joint utilization



#### Structure–action duality and the areas of cooperation within the network of NHRIs

**Joint management of the complaint mechanism.** Some NHRIs, as for example the Commission for Human Rights and Administrative Justice in Ghana (CHRAJ), have a mandate to receive complaints, which requires many resources. In some cases complaint handling can be so exhaustive that there are no resources left for policy work, such as agenda-setting, lobbying

or capacity-building. The cooperation of NHRIs with a complaint handling mandate can save resources which might be used otherwise. For instance, as mentioned above, the Indian Commission for Human Rights developed a complaint handling software which was made available to the Afghan Commission under the terms of a MoU.



**Related structure–action–duality:** The access to resources is brought about by staff members of individual NHRIs, since they have to allocate working time to network processes. It is also achieved through organizational investment in certain projects, either through the institutional budget of the organization or through other financial sources. However, many resources are non-finite<sup>24</sup> and thus can be jointly utilized throughout the network. The utilization of the Indian Commission's complaint mechanism software

by the Afghan Commission does not reduce its availability for other NHRIs. Whenever a network member produces goods that are not exhausted by their use, joint utilization will save resources for the network. However, it is clear that such utilization is only possible if communication is based on a common understanding and legitimate request for the utilization; thus, the dimensions of structure as well as those of action are recursively interrelated:



To identify all non-finite goods produced in the network and to provide them as common resources for a mutual utilization is a task of cooperation itself. One possible management of communication on this

could be regular surveys by the regional networks on the products of their members and an online inventory of all accessible common resources.

**Training and capacity-building on the protection of human rights within business-related activities particularly for state-owned corporations.** Home- and host-state NHRIs can directly contribute to each other's business and human rights capacity. Home-state NHRIs can train host-state NHRIs on home-state economic instruments or processes which affect business in the host states. Training activities can take place at meetings, conferences, seminars, workshops, and often is part of twinning projects. They can also be offered in collaboration with partnership organizations like the United Nations Development Programme or the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. Capacity-building and training in particular facilitate learning about international standards and effective procedures in the area of human rights. Future improvement should include a more strategic approach to tailor the activities according to key shared needs, a greater member participation in the selection of training topics and speakers, a better promotion and awareness of the training offered, and additional funding for participation in the trainings. Examples include the GSP+ programme of European Union trade preferences, the OECD Guidelines for transnational corpora-

tions and the associated complaint procedure, or elements of the home state's National Action Plan on Business and Human Rights.

**Mutually attended working groups and events.** NHRIs attend special events on business and human rights or join working groups on the issue to exchange best practices, network, and share experiences. Successful practices can guide NHRIs to improve their domestic activities and thus contribute, to their overall empowerment. Events and workshops need to be accessible, transparent, effective, and participatory in order to guarantee and equal diffusion of knowledge. In order to meet these criteria, it has to be ensured that limited capacities and financial constraints of individual NHRIs are addressed, communication and follow-ups are enhanced, meetings are strategically planned according to desired outcome and audience to minimize costs, and capacities are shared among more NHRIs. The regional secretariats and the ICC need to coordinate not only NHRI cooperation, but also inter-network relations since many NHRIs are part of different networks which puts them at risk of resource exhaustion.

<sup>24</sup> The technical economic term is "non-rivalrous". Public goods are defined as "non-rivalrous" in the consumption and "non-excludable" from consumption. A complaint-handling-software is not a public good, since officers can be excluded from using it, but it is "non-rivalrous" in the sense that a simultaneous utilization of one officer will not impact the utilization of another. The technical term for this specific kind of goods is "club goods". In this study we will call them "non-finite goods" or "common resources".



### 3.2 NHRI interaction with stakeholders

NHRI networks are a means for changing business structures and activities so that they support the goals of NHRIs concerning business and human rights. Cooperation can prepare and/or enable individual NHRIs for their interactions with stakeholders, such as businesses, civil society and governments. In other cases NHRIs can jointly interact with stakeholders, either as a whole network, namely the ICC, or as groups of NHRIs. The dimensions of action within the network – communication, requests, and mutual undertakings – can be translated into the interaction with stakeholders as:

- 1 Communication of individual NHRIs or the ICC with stakeholders
- 2 Sanctions of individual NHRIs or the ICC against stakeholders
- 3 Influence of NHRIs on other stakeholders

**Communication.** An effective communication with all stakeholders requires NHRIs to understand the codes and rules of communication in the global scene of business and human rights. This raises issues such as whether an agreed language exists and what its limits are; whether there are themes and positions that could endanger the relationship to a stakeholder; or whether stakeholders exist where direct communication is not possible but there might be a possibility of a detour through another stakeholder?

**Sanctions.** NHRIs may sanction other stakeholders either directly or through other stakeholders, especially through the government: Within the realm of complaint handling, for example, NHRIs can indirectly sanction stakeholders that breach human rights through reporting to the Attorney-General. Published reports of human rights violations can have costs of reputation for the stakeholder that has breached human rights.

**Influence.** NHRIs exert influence on stakeholders through publications, conferences, consultations, and lobbying or submissions to decision-makers that increase the influence of human rights. If the network of NHRIs becomes capable of a systematic monitoring of transnational value chains, it will have the influence to adjust grievance mechanisms and systems of due diligence and reparation.

Influence might be exerted through hard measures or soft measures. Hard measures include actions applied to directly influence a certain business policy. These

include monitoring, complaint mechanisms, HRIA/HARRA, or amicus curiae submissions to courts. Soft measures have a longer-term perspective and aim to establish new ideas, rules, and guidelines on business and human rights. Accordingly, dialogues, workshops, and conferences serve the purpose of spreading knowledge and views among stakeholders in order to influence them slowly.

NHRIs can also use their resources to spread knowledge, viewpoints and standards through capacity-building workshops and trainings. These soft measures might, in the long run, contribute to the establishment of new rules and guidelines on business and human rights.

NHRI interaction with stakeholders again demonstrates that all three analytical dimensions of action (communication, sanction, and influence) are interrelated: Human rights protection needs adequate observation and effective sanctioning mechanisms. Systematic monitoring of value chains requires trained staff and organizational tools. However, staff and tools alone will not bolster the networks' influence. Only adequate communication with stakeholders and within the network on the basis of a common understanding will result in an influential activity.

#### 3.2.1 Understanding – communication

**Workshops and conferences.** Since an effective international human rights regime requires an agreed language, common understanding, and shared knowledge, NHRIs need to coordinate effective stakeholder communication. Due to the international character of business and human rights issues and the transnational orientation of businesses, political actors, and NGOs, NHRIs need to cooperate in the organization of dialogue. International multi-stakeholder workshops and conferences on a regular basis foster informal and formal contacts across borders, enable information exchange, and stimulate the discourse on business and human rights. This is essential for establishing open communication channels and stable relationships, even among stakeholders with opposing views and interests.

**Joint lobbying, policy statements and consultation.** NHRIs can jointly lobby regional, supranational, or international organizations. When new policies are being discussed at the regional level, NHRIs can jointly consult with e.g. the European Union or ECOWAS, strengthening their influence by making it clear that they speak for a much larger constituency. NHRIs can get involved in the elaboration of policy statements on

business and human rights issues. They indicate that the process needs to be systemized with an adequate time schedule for members to work on the statements. As mentioned above, clear and transparent guidelines and frameworks are useful to develop long-term strategies and to plan in advance. One example of this is a joint submission to the OECD by the NHRIs of Denmark, Germany, and France on human rights standards in the OECD Common Approaches to export credit guarantees. By agreeing a common position, the three NHRIs are able to represent a much larger constituency in dealing with such bodies.

On the other hand, if no sufficient communication exists and the common understanding is not much developed, research outcomes may be contradictory on the network level, which in the worst case could undermine the legitimacy of the interaction of the network or its members with stakeholders. In some cases, disregard of the understanding-communication duality will even paralyze the networks action on this issue, especially if ad hoc submissions or statements to international or supra-national organs have to be made. Such quick reactions, e.g. at the UN Human Rights Council, are only possible if the rules of communication, the common understanding of certain issues, is part of a network process which serves the promotion and protection of human rights in business environments.

### 3.2.2 Legitimacy – sanctions

**National Action Plans.** The UN Working Group on business and human rights strongly encourages all States to develop, enact and update a National Action Plan as part of their responsibility to disseminate and implement the Guiding Principles on Business and Human Rights. In 2013 and 2014, a number of countries have produced a National Action Plan or are in the process<sup>25</sup> of developing a NAP and others will follow. Within these NAPs, new guidelines for national legislation are established concerning also the role and mission of NHRIs in the area of business and human rights. NHRI cooperation, not only regionally, but internationally, is crucial in coordinating national efforts in order to ensure a certain level of coherence of the developing international framework for NHRI action on business and human rights providing for the compatibility of mutual demands.

**UN mechanisms, judicial mechanisms, national legislation.** NHRIs may sanction businesses perpetrating human rights abuses indirectly via UN mechanisms, e.g. by contributions to treaty bodies and country reports of special rapporteurs as well as the UPR. Coordinated efforts and joint positions of various NHRIs will increase their legitimacy and influence.

Judicial mechanisms are another venue for sanctioning human rights abuses, either nationally or internationally like at the ECHR. NHRIs can support these cases by e.g. submitting *amicus curiae* briefs, providing evidence and observations, and monitor the application of international human rights law in the court proceedings. National legislation of the home state of a business can be the basis for pursuing sanctions. NHRIs should be actively engaged in advising their governments on business and human rights issues in order to provide a legal and political framework that comprehensively protects human rights and grants access to remedies. In this regard, the exchange of best practices and experiences on the human rights impacts of certain regulations between NHRIs is important. Cooperation can further work towards the coherence of different national legislations. Concerning the transnational scope of many businesses, the legislation of a business' home state and host state in particular should be complementary up to a level that ensures effective legal protection.

NHRIs' relationships with external stakeholders frame their cooperative work within the NHRI network and should be used to give it strategic direction. Only when NHRIs effectively translate their interactions with external stakeholders into the steering of their own cooperation will it be possible to work towards a globally coherent judicial system that grasps the gap between national law and transnational human rights violations.

**Public relations as a network instrument to sanction business behavior with negative human rights impacts.** Another option for sanctioning is to publish reports of human rights violations or to activate NGOs for campaigns that threaten the reputation of a business. Although this way of sanctioning is very indirect, NHRIs cannot underestimate the sanctioning power a consumer's attitude exerts on a business when legal means are not viable. However, NHRIs need to cooperate closely among each other and with other stake-

25 Countries that launched a NAP: UK (September 2013), The Netherlands (December 2013), Italy (March 2014), Denmark (April 2014), and Spain (summer of 2014 but still subject to approval by the Spanish Council of Ministers). Countries currently producing a NAP: Switzerland and Finland. Source: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

holders, particularly NGOs, communities, and the press in order to reach the voice and the leverage to influence the perception of a business and bring about a change in policy.

### 3.2.3 Access to resources – influences

**Evaluation of human rights impacts of businesses.** In order to conduct HRIAs and HRRAs, NHRI not only need to cooperate among each other, but also with other stakeholders. For instance, the Danish Institute for Human Rights together with IPIECA, the global oil and gas industry association for environmental and social issues, developed a comprehensive guide for business on how to integrate human rights into environmental and social impact assessments.<sup>26</sup> Another example for NHRI dialogue with external stakeholders is the 'Nairobi Process: A Pact for Responsible Business' developed by the Kenyan National Commission for Human Rights (KNCHR) in collaboration with the Institute for Human Rights and Business (IHRB), an international civil society organization, to embed human rights due diligence through the application of the UN Guiding Principles on Business and Human Rights in the emerging oil and gas sector in Kenya. Sister institutions report that businesses often asked for advice on strategies of how to set up a proper human rights due diligence system, which included human rights risk assessments. When cooperating with other stakeholders, particularly businesses, it is important that NHRIs make sure that they secure their room for maneuver through contracts (legitimacy) and communication with other stakeholders and sister institutions. If they put safeguards in place to maintain their independence, NHRIs can be paid for their expertise or receive additional funding for their services from governments or sister institutions. For instance, a host-state NHRI may receive resources from the business' home-state government or if applicable/possible even from or through that country's NHRI. Using those resources in a legitimate way on the basis of organized communication with stakeholders, the NHRI will exert influence on business activities involved in human rights violations through HRIAs and HRRAs.

In addition to the direct human rights impact of business, there are also possible indirect human rights impacts, e.g. pollution, socio-economic or demographic changes caused by businesses, intendedly or unintendedly. Business impacts are also often contradicto-

ry. For instance, some Bangladeshi subsidiaries of European companies in the garment sector have caused severe human rights violations, such as the violation of the right to health, the right to adequate housing and the right to enjoy just and favourable conditions of work. At the same time the garment sector has led to an empowerment of women from rural areas: conservative families accepted that young female family members leave in order to work in the metropolises of their country and sometimes to become the main income generator. Another example are effects that can be caused by agricultural investments: An investment may improve socio-economic conditions of a community in a specific region by increasing employment or improving the infrastructure of that region and at the same time change the population's traditional areas of work and sometimes way of living. This may cause unemployment and poverty in the long-term, when the demand for specific agricultural goods decline. In order to be able to assess such impacts, NHRIs will either have to use resources for their own research or to cooperate with research institutes, universities or independent academics.

**Awareness-raising for human rights issues of government officials and business representatives.** The results of NHRI research need to be communicated to stakeholders in order to bring business-related activities into compliance with national and international human rights standards. The home- and host-state NHRIs can directly cooperate, with the host-state NHRI passing information to the home-state NHRI, which, in turn, conducts training for the company's executives and government officials.

Government officials have an important role when trade or investment agreements are signed. They can help ensure that human rights issues are an integral part of such regulations. Consequently, governmental officials should be aware of direct and indirect human rights risks in the context of trade and investment. Additionally, they should be aware of which human rights treaties and protocols are signed by their governments. Only through an effective communication between NHRI and government officials and the incorporation of NHRI expertise in government decisions can the human rights perspective in transnational policy processes be ensured. Such NHRI-government cooperation is difficult since investment agreements or export promotion decisions are usually not a matter

26 DIHR, IPIECA, Integrating human rights into environmental, social and health impact assessments, 2013  
<http://www.ipieca.org/news/20131206/integrating-human-rights-environmental-social-and-health-impact-assessments>

of concern for the governmental human rights departments but rather for those who deal with economic policy. For instance, the primary purpose of export promotion is to make foreign markets accessible for domestic companies. Environmental and social sustainability, and to a narrower extent human rights<sup>27</sup> are among the criteria for a governmental export promotion of private business projects in regions with political or economic risks, but they are not the purpose of such promotion. However, it should be a major NHRI interest to work for policy coherence in the sense of the UNGPs so that any government department utilizes maximal available resources to check if their action has human rights impacts and if so to ensure that those impacts are positive.<sup>28</sup> This is possible either through human rights departments within ministries or even through direct cooperation with other departments in the ministries, such as, in the case of Germany, the department for export promotion of the ministry for economic affairs.

Since research confirms that international human rights norms are likely to take hold on a regional level,<sup>29</sup> cooperation between NHRIs can make a major contribution to the implementation of new standards in the area of business and human rights on a regional level. Consultations and capacity-building workshops with business representatives as well as with government officials serve as a platform to communicate more general human rights concerns and put long-term goals on the agenda.

**Empowerment of civil society.** A strong civil society is essential for progress in business and human rights debates and activities. NGOs advocating for the most vulnerable groups such as indigenous peoples are crucial for comprehensive human rights protection in the realm of business activities, but often lack sufficient funding. While government resources fund core NHRI functions and businesses, and transnational corporations usually have whole departments on sustainability issues, NGOs often struggle with acquiring the donations necessary to run the most basic activities. Thus the empowerment of civil society actors may be an effective strategy to achieve key NHRI goals. Empowerment can entail resource transfer through bilateral development cooperation systems, where home-state NHRIs can transmit resources from their governments to host-state organizations by common

interests, joint activities, facilitating contacts, or capacity-building workshops.

**Regional and international engagement.** Engagement with regional and international human rights mechanisms includes meetings, joint declarations, parallel reporting, capacity-building, and country-specific action plans. They are informative and facilitate strategic involvement of NHRIs in partnership projects. Key to influential activities are strategic planning and a strong secretariat that bundles efforts and resources of individual NHRIs.

27 Since 2012, the OECD „Common Approaches“ do include human rights, but only to the extent of the IFC Performance Standards.

28 UNGP 8,S9, 10.

29 See Pegram, T., 'Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions' (2010) 32 Human Rights Quarterly 729 and Simmons, B., 'Why commit? Explaining state acceptance of international human rights obligations' Paper prepared for meeting of the Conference on Delegation to International Organizations, May 3-4 2002, Brigham Young University, Provo, Utah.

### Model of NHRI cooperation

The tables 2a and 2b outline the model for a strategic network planning tailored for NHRIs in the field of business and human rights as it is elaborated in the current section. The first part of the table is a framework for NHRI cooperation among sister institutions. The second part frames cooperation with external stakeholders. The model defines three analytical dimensions of structure and corresponding three dimensions of (inter)action.

Table 2a: NHRI cooperation within the network

Internal structural dimensions of NHRI network cooperation	Understanding (Rules of communication)	Legitimacy (Rules as a normative basis for requests)	(System of access to) Resources
Bodies of NHRI network cooperation	<ul style="list-style-type: none"> <li>■ Regional NHRI Network Secretariats</li> <li>■ ICC Working Group</li> <li>■ Focal Points</li> </ul>	<ul style="list-style-type: none"> <li>■ Regional NHRI Network Secretariats</li> <li>■ ICC Working Group</li> <li>■ Bi-/Multilateral NHRI Cooperation</li> </ul>	<ul style="list-style-type: none"> <li>■ Regional NHRI Network Secretariats</li> <li>■ ICC</li> <li>■ Bi-/Multilateral NHRI Cooperation</li> </ul>
Interaction dimensions within the NHRI network	Communication	Requests	Mutual undertakings/ joint utilization
Areas of cooperation (thematic areas to which the dimensions of structure and action apply)	<ul style="list-style-type: none"> <li>■ HRRA / HRIA</li> <li>■ Home-Host-State-Relations</li> <li>■ Policy Exchange</li> <li>■ etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ Institutionalization of cooperation (regional/international institutions)</li> <li>■ etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ Joint management of a complaint mechanism</li> <li>■ Capacity-building</li> <li>■ etc.</li> </ul>
Modalities (means by which structures are translated into action)	<ul style="list-style-type: none"> <li>■ Agreed language on the field of action, risks, possibilities, boundaries</li> <li>■ Common understanding of mission</li> <li>■ Shared knowledge</li> <li>■ Common procedures and approaches</li> </ul>	<ul style="list-style-type: none"> <li>■ Mandate (for cooperation)</li> <li>■ UNGPs</li> <li>■ Human rights as codified in international treaties</li> <li>■ National and international laws</li> <li>■ Cooperation agreements</li> <li>■ MoUs</li> <li>■ Edinburgh Declaration, etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ Financial Resources: Travel expenses, Conference costs, publications, IT</li> <li>■ Organizational capacities: staff, employees</li> </ul>

Table 2b: NHRI cooperation with stakeholders

External structural dimensions of cooperation (with stakeholders)	Understanding (Rules of communication)	Legitimacy (Rules as a normative basis for sanctions)	(System of access) Resources (of influence)
Venues/ Properties of NHRI network cooperation	■ Direct Stakeholder-NHRI cooperation	■ NHRI-State cooperation	■ NHRI-Business cooperation
Interaction dimensions with stakeholders	Communication	Sanction	Influence
Areas of cooperation (thematic areas to which the dimensions of structure and action apply)	<ul style="list-style-type: none"> <li>■ Dialogue with business officials/ corporate social responsibility officers</li> <li>■ Joint lobbying and consultations</li> </ul>	<ul style="list-style-type: none"> <li>■ National Action Plans</li> <li>■ UN mechanisms, such as UPR reports, Concluding Observations, country reports of Special Rapporteurs, UN Special complaint mechanism</li> <li>■ National judicial mechanisms,</li> <li>■ Supranational judicial mechanisms</li> <li>■ National Legislation</li> <li>■ Gap-analysis</li> <li>■ Public Relations</li> <li>■ etc.</li> </ul>	<ul style="list-style-type: none"> <li>■ HRIA / HRRRA</li> <li>■ Awareness-raising for human rights issues of government officials and business representatives</li> <li>■ Empowerment of civil society</li> </ul>
Modalities (means by which structures are translated into action)	<ul style="list-style-type: none"> <li>■ Agreed language on business obligations</li> <li>■ Common understanding of human rights protection</li> <li>■ Shared Knowledge on how to effectively provide for the protection of human rights within business related activities</li> <li>■ NHRI reputation</li> </ul>	<ul style="list-style-type: none"> <li>■ UNGPs</li> <li>■ Human Rights as codified in international treaties</li> <li>■ National and International Laws</li> <li>■ Agreements/MoU with Businesses, Civil Society</li> </ul>	<ul style="list-style-type: none"> <li>■ Financial Resources:</li> <li>■ Travel expenses</li> <li>■ Conference costs</li> <li>■ Publications</li> <li>■ IT</li> <li>■ Organizational Capacities:</li> <li>■ Staff, Employees</li> </ul>

## 4 Monitoring and evaluation

Since network cooperation is a process and thus highly dependent on both structures of cooperation in the sense of rules and resources as described above and the individual officers who have the will and capacity to use those structures, the NHRI network cannot be steered nor can its interactions be fully controlled. However, in order to determine the network's general direction of development, to utilize synergies, and to identify and overcome obstacles, NHRI cooperation should be continually monitored, both by officers of the individual NHRIs and by other bodies of cooperation within the network.

NHRIs must therefore develop assessment standards and adequate methods for evaluating the state of international cooperation and whether progress with regards to the areas of cooperation is being made or not. The model of NHRI network cooperation presented in this paper can serve as a basis for the development of such methods.

Accordingly, the following dimensions of monitoring should be considered with regards to NHRI network cooperation:

- **The density of the network** in terms of
  - quantity of cooperative activities,
  - quantity of involved NHRIs,
  - frequency of activities.
- **Resource usage:** The costs should not outweigh the benefits of cooperation. Hence, monitoring should ensure that intensified communication and the establishment of institutionalized cooperation do not pose a disproportionate additional burden on already thinly-stretched NHRIs.
- **Influence:** The degree of influence the NHRI network exerts on external stakeholders through its activities is an important aspect of NHRI cooperation efforts. Here, qualitative analysis should regard the type of stakeholder and the form of influence e.g. business through HRRRA/HRIA, CSOs through empowerment instruments, and government representatives

through consultations, lobbying, or workshops.

- **Legitimacy of NHRI network cooperation:** The establishment and implementation of regulations and norms concerning the cooperation of NHRIs is an essential dimension to be monitored regularly since they set future guidelines for NHRI interaction. Further, the progress of institutionalization within regional and international cooperation institutions should be subject to regular evaluation.
- **Legitimacy for sanctioning:** Regarding an outward perspective, NHRIs' sanctioning activities should be assessed to identify potential areas for network cooperation. Targeted cooperation on this issue is crucial to save resources and, at the same time, enhance the impact of sanctioning activities.
- **Communication:** Monitoring of network communication can ensure that knowledge spreads evenly through the network and all NHRIs are equally integrated so that the cooperation on common understanding and procedures is on eye-level. Further, monitoring of internal and external communication patterns helps to improve efficiency and to reduce costs in terms of financial resources and organizational capacities.
- **Intended and unintended effects of action:** Network interactions should also be subject to an evaluation including the intended and unintended effects of NHRI cooperation, which are not easy to detect. This avoids or reduces negative side effects, possible harmful consequences for individual NHRIs or other stakeholders, and wasted resources, preconditions for the further development of NHRI network cooperation.

The ICC and the regional networks should routinely turn their attention to the issue of transnational cooperation and evaluate what is going well and where improvements need to be made. This monitoring should be reflected at each regional meeting as well as at the annual ICC meetings and at ICC Working Group meetings.

Table 3a: Possible further steps for transnational NHRI cooperation between NHRIs

Further steps	Interaction			Responsible cooperation bodies	Commentary
	Communication	Requests	Mutual undertakings/ Joint utilizations		
1		Declaration on Cooperation, defining goals		■ ICC	Commonly agreed terms and goals of cooperation will increase the visibility and transparency of the network for the individual NHRIs as well as for external stakeholder. On this basis, network cooperation enjoys the broad legitimacy of its members and clear guidelines are set on what to expect, request, and to perform within the cooperative structure. This will help to fully utilize the potential of the network
2		A common framework of action		■ ICC ■ ICC WG ■ Regional Secretariats	Common activities on the basis of the joint declaration on cooperation should be planned according to a common framework. The framework will provide for a systemized, structured, and strategic approach to activities. This will help to improve the coordination through setting realistic timeframes and schedules. Further, the framework can acknowledge and address explicitly the unequal distribution of resources and capacities of individual NHRIs in order to keep members being low on resources participating in the network. The framework can also feature a list of information and capacities needed as well as provide for an adequate time-line for responses. Further, a shared calendar could help with forward planning, with as much notice as possible, including ICC, EU, OHCHR, and UN events and identify possible areas of cooperation to utilize synergy effects (e.g. link members coming before UPR or treaty bodies in the same session, so that they could work collaboratively during these processes)



Further steps	Interaction			Responsible cooperation bodies	Commentary
	Communication	Requests	Mutual undertakings/ Joint utilizations		
3			Workshop meeting with responsible officers	<ul style="list-style-type: none"> <li>■ Focal Points</li> </ul>	Regular meetings of NHRIs' respective focal points will establish formal and informal ties between the institutions
4			Setting up a fund for mutual undertakings	<ul style="list-style-type: none"> <li>■ ICC</li> <li>■ Regional Secretariats</li> </ul>	A fund can help NHRIs being low on financial resources and organizational capacities to still participate in mutual undertakings. This will contribute to overcoming asymmetries in the network cooperation secure the participation of institutions from diverse backgrounds. Particularly important will be support for information sharing and capacity-building to keep network cooperation on eye-level.
5			Setting up a permanently renewed list of common resources/non-finite goods	<ul style="list-style-type: none"> <li>■ Regional Secretariats</li> </ul>	
6	Development of a digital database, accessible for all active NHRIs			<ul style="list-style-type: none"> <li>■ Focal Points</li> <li>■ ICC WG</li> <li>■ ICC</li> <li>■ Individual NHRIs with IT experiences</li> </ul>	An NHRI-internal database of information on sectors, corporations, and countries would strengthen individual NHRI's capacity and institutional memory. The database should include information about individual cases, sectors, companies, or countries, which subsequent NHRIs could use as a resource when they have international cases that deal with these same situations or actors. Though the exact details such as the scope of the data, access to it, and resources to maintain it would have to be the subject of further discussion, a common information bank for all NHRIs working in the field of business and human rights would preserve work done by individual institutions in this field for the benefit of all others.

Further steps	Interaction			Responsible cooperation bodies	Commentary
	Communication	Requests	Mutual undertakings/ Joint utilizations		
7	Development of common methodologies for joint lobbying, assessments, investigations etc.			<ul style="list-style-type: none"> <li>■ Focal Points</li> <li>■ ICC WG</li> <li>■ Individual NHRIs</li> </ul>	Common methodologies will enhance the coherence of individual NHRI activities which facilitates international cooperation. They will further make cooperation more resource efficient since activities need less organizational capacities to be coordinated. Finally, NHRIs can more easily access and build on previous work of other NHRIs.
8	Regular meetings on the progress of cooperation			<ul style="list-style-type: none"> <li>■ Focal Points</li> <li>■ Individual NHRIs</li> </ul>	As outlined above, cooperation within networks is not a self-sustaining process, but needs to be managed adequately to avoid setbacks or negative consequences for individual NHRIs. Therefore, regular meetings should reflect the progress made and identify hidden issues and obstacles like a lack of resources, power or information asymmetries, or language barriers. The outcome should then be dealt with by the cooperation bodies.
9	Develop ICC protocols for various forms of transnational cooperation			<ul style="list-style-type: none"> <li>■ ICC WG</li> <li>■ Focal Points</li> </ul>	ICC protocols and routines will improve cooperation on a number of crucial issues like the management of individual cases or HRIAs. This will improve the efficiency and accelerate the process of cooperation.

Further steps	Interaction			Responsible cooperation bodies	Commentary
	Communication	Requests	Mutual undertakings/ Joint utilizations		
10	Facilitate institutionalization of cooperation			<ul style="list-style-type: none"> <li>■ ICC</li> <li>■ ICC WG</li> <li>■ Regional Secretariats</li> <li>■ Sub-regional secretariats</li> <li>■ Individual NHRIs</li> </ul>	Increasing the functionality and support of regional secretariats, sub-secretariats, as well as the ICC will help to manage cooperation more effectively, thus saving resources and establish communication channels. Further, institutional memory that can be accessed by all individual members of the network contributes to capacity-building, and the establishment of routines. Institutional bodies also play a crucial role in moderating cooperation and exchange, setting up and coordinating thematic working groups and workshops, organizing member meetings and preparing rules for engagement. Finally, forward planning and linking members' activities in advance helps Individual NHRIs to connect for mutual benefit. A solid institutional base can manage and balance the issues that arise from the diversity of membership (north-south divide, asymmetries in resources, different mission statements, priorities, mandate) which make ad hoc coordination and consensus a challenge. Finally, the ICC can help to coordinate regional networks, which is of particular importance for resource management since NHRIs tend to be member of several networks. This will require transferring organizational capacities, competences, and resources to the institutional bodies.
11	Establishment of an intranet and/or public website and forum			■ ICC	NHRI intranet, website, and forum will strengthen the communication structures including through accessible centralized information making communication more effective than email traffic. This will help to overcome insufficient communication between members, improve the diffusion of information within the network and profile with external stakeholders (e.g. businesses)

Table 3b: Cooperation between NHRIs and stakeholders

Further steps	Interaction			Responsible cooperation bodies	Commentary
	Communication	Sanction	Influence		
1	Establish a platform for ICC engagement with World Bank, other regional IFIs:			<ul style="list-style-type: none"> <li>■ ICC</li> <li>■ Regional Secretariats</li> <li>■ Sub-regional secretariats</li> </ul>	Common platforms with international financial institutions will facilitate communication and coordination with important stakeholders in the area of business and human rights. NHRIs can, through the ICC, express their concerns, exchange information, and facilitate common understanding.
2	Establish a common web presence			<ul style="list-style-type: none"> <li>■ Regional Secretariats</li> </ul>	Particularly regional cooperation networks need a stronger visibility to clearly communicate their mission, and policies to other stakeholder, but also to inform about meetings and conferences.
3			Joint lobby/ consultation coordination	<ul style="list-style-type: none"> <li>■ ICC</li> <li>■ Regional Secretariats</li> <li>■ Focal Points</li> </ul>	Joint lobby initiatives increase the leverage of NHRIs. Particularly in the field of business and human rights with predominantly transnational issues, cooperation between e.g. the home and host states of corporations is essential for establishing an effective human rights regime. In this context, coordination and strategic planning are important to identify windows of opportunities, manage synergy effects, and bundle resources. Hence, regional working groups and meetings of responsible officers should work on transnational business and human rights policies

Further steps	Interaction			Responsible cooperation bodies	Commentary
	Communication	Sanction	Influence		
4			Civil Society trainings	<ul style="list-style-type: none"> <li>■ Individual NHRIs</li> <li>■ Regional Secretariat</li> </ul>	The effective promotion and protection of human rights needs a strong civil society. Civil society organizations play a vital role in monitoring corporations and exerting public pressure on perpetrators of human rights violations. NHRIs need to support and strengthen the activities of human rights organizations particularly in countries with a weak civil society presence. International cooperation on the issue needs to provide resources for training activities, spread best practices, and establish international links. Endured and strategic cooperation with civil society actors must, thus, be planned in regional working groups and meetings.
5		Public Relations strategy		<ul style="list-style-type: none"> <li>■ Regional Secretariat</li> <li>■ ICC</li> </ul>	When formal sanctioning mechanisms do not apply or are ineffective in protecting and promoting human rights, a public campaign can be a powerful tool to force the perpetrating business to change policies. Public campaigns, however, need well-established links to civil society actors, particularly media representatives, and can be resource consuming. Regional secretariats and the ICC are important to coordinate individual NHRi communication, facilitate links to civil society, and strategically plan action.
6		Sanctioning and monitoring mechanisms		<ul style="list-style-type: none"> <li>■ ICC</li> <li>■ Regional Secretariat</li> </ul>	Internationally orchestrated NHRi activities will enhance the influence on international sanctioning mechanisms. The ICC and the regional secretariats need to coordinate individual activities and moderate internal communication on common positions and strategies in order to manage activities effectively.

Further steps	Interaction			Responsible cooperation bodies	Commentary
	Communication	Sanction	Influence		
7	Issue-related Multi-stakeholder forum			<ul style="list-style-type: none"><li>■ Regional Secretariat</li><li>■ Focal points</li><li>■ Individual NHRIs</li></ul>	Regular meetings of key stakeholder on key issues in the area of business and human rights within a certain region will facilitate communication and information exchange. The individual NHRIs and the regional secretariats should take a leading role in preparing and coordinating the meetings. Established communication channels will help to identify future challenges to human rights protection and their solutions before they occur.

## 5

# Bibliography

Anderson, K, 'Squaring the circle? Reconciling sovereignty and global governance through global government networks' (2005) 118 Harvard Law Review pp 1255.

Byrnes, A, et al., 'Joining the Club: The Asia Pacific Forum of National Human Rights Institutions, the Paris Principles, and the Advancement of Human Rights Protection in the Region' (2008) 14 Australian Journal of Human Rights 63.

Cardenas, S, 'Emerging Global Actors: The United Nations and National Human Rights Institutions' (2003) 9 Global Governance 23.

Danish Institute for Human Rights, French National Consultative Commission on Human Rights, and German Institute for Human Rights, 'Submission to OECD Consultation between Civil Society Organisations (CSOs) and Members of the OECD's Working Party on Export Credits and Credit Guarantees (ECG)' (2013) [Online], Available from: [http://www.institut-fuer-menschenrechte.de/fileadmin/user\\_upload/PDF-Dateien/Sonstiges/Danish\\_Institute\\_for\\_HR\\_French\\_Nat\\_Con-sultative\\_Commission\\_on\\_HR\\_and\\_GIHR\\_Submission\\_to\\_OECD\\_Consultation\\_between\\_CSOs\\_and\\_Members\\_of\\_the\\_OECDs\\_Working\\_Party\\_on\\_Export\\_Credits\\_and\\_Credit\\_Guarantees\\_2013.pdf](http://www.institut-fuer-menschenrechte.de/fileadmin/user_upload/PDF-Dateien/Sonstiges/Danish_Institute_for_HR_French_Nat_Con-sultative_Commission_on_HR_and_GIHR_Submission_to_OECD_Consultation_between_CSOs_and_Members_of_the_OECDs_Working_Party_on_Export_Credits_and_Credit_Guarantees_2013.pdf) (PDF, 34,9 KB, not barrier-free) [2014, August 07].

Deutsches Institut für Menschenrechte, 'Menschenrechtliche Risikoanalyse in der Exportwirtschaft verankern' (2013) [Online] Available from: <http://www.institut-fuer-menschenrechte.de/aktuell/news/meldung/archive/2013/november/22/article/menschenrechtliche-risikoanalyse-in-der-exportwirtschaft-verankern.html> [2014, August 07].

Deutsches Institut für Menschenrechte, 'Austerity and Human Rights in Europe – Perspectives and Viewpoints from Conferences in Brussels and Berlin 12 and 13 June 2013' (April 2014) [Online] Available from: [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Austerity\\_and\\_Human\\_Rights\\_in\\_Europe.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Austerity_and_Human_Rights_in_Europe.pdf) (PDF, 657,9 KB, not barrier-free)

Deutsches Institut für Menschenrechte, 'Business and Human Rights – The Role of National Human Rights Institutions' (August 2014) [Online] Available from: [http://www.institut-fuer-menschenrechte.de/uploads/tx\\_commerce/Documentation\\_Business\\_and\\_Human\\_Rights\\_The\\_Role\\_of\\_NHRI.pdf](http://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Documentation_Business_and_Human_Rights_The_Role_of_NHRI.pdf) (PDF, 369 KB, not barrier-free)

European Network of National Human Rights Institutions, 'Report on Membership Survey for Strategic Planning. Paper prepared for the meeting of European Network of National Human Rights Institutions at the strategic planning meeting on 13 to 15 November 2013' (2013) [Online] Available from: [http://www.enhri.org/uploads/3/1/5/7/31578217/enhri\\_member\\_survey\\_report\\_sp\\_2013.pdf](http://www.enhri.org/uploads/3/1/5/7/31578217/enhri_member_survey_report_sp_2013.pdf) (PDF, 1,79 MB) [2014, August 13].

European Network of National Human Rights Institutions, 'Situational Review for Strategic Planning. Paper prepared for the meeting of European Network of National Human Rights Institutions at the strategic planning meeting on 13 to 15 November 2013' (2013).

European Network of National Human Rights Institutions, 'Strategic Plan 2014–2016, Including Operational Plan 2014' (2014) [Online] Available from: [http://www.enhri.org/uploads/3/1/5/7/31578217/enhri\\_strategic\\_plan\\_2014\\_16\\_op\\_2014.pdf](http://www.enhri.org/uploads/3/1/5/7/31578217/enhri_strategic_plan_2014_16_op_2014.pdf) (PDF, 593,3 KB) [2014, August 13].



- Fitzpatrick, K, 'The Asia Pacific Forum: a partnership for regional human rights cooperation' in B Lindsnaes, L Lindholt, and K Yigen (eds), National Human Rights Institutions, Articles and Working Papers, Input to the Discussions of the Establishment and Development of the Functions of National Human Rights Institutions (The Danish Centre for Human Rights 2001).
- Giddins, A, The constitution of society. Outline of the theory of structuration (Cambridge: Polity Press, 1984).
- International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 'The Edinburgh Declaration' (2010) [Online], Available from: [http://scottishhumanrights.com/application/resources/documents/ENG\\_Sep\\_2010\\_Edinburgh\\_Declaration\\_FINAL\\_101010\\_1417h.doc](http://scottishhumanrights.com/application/resources/documents/ENG_Sep_2010_Edinburgh_Declaration_FINAL_101010_1417h.doc) [2014, August 07].
- International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, 'NHRI Capacity Building within Business and Human Rights' (2014) [Online], Available from: <http://nhri.ohchr.org/EN/Themes/BusinessHR/Pages/Capacity%20Building.asas> [2014, August 07].
- Murray, R, The role of national human rights institutions at the international and regional levels. The African experience (Oxford: Hart, 2007).
- Murray R 'National human rights institutions: criteria and factors for assessing their effectiveness' (2007) 25 Netherlands Quarterly of Human Rights 189.
- Office of the High Commissioner for Human Rights, 'State national action plans' (2014) [Online] Available from: <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>, [2014, August 07].
- Pegram, T, 'Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions' (2010) 32 Human Rights Quarterly 729.
- Saage-Maaß, M., Müller-Hoff, C., „Transnationale Unternehmen in Lateinamerika: Gefahr für die menschnrechte?“, ECCHR, April 2011
- Simmons, B., 'Why commit? Explaining state acceptance of international human rights obligations' (2002) Paper prepared for meeting of the Conference on Delegation to International Organizations, May 3–4, Brigham Young University, Provo, Utah.
- Sydow, J, 'Strategische Netzwerke – Evolution und Organisation' (Wiesbaden: Gabler, 1995)
- Sydow, J, and A Windeler, 'Steuerung von Netzwerken – Perspektiven, Konzepte und vor allem offene Fragen' in J Sydow and A Windeler (eds.), Steuerung von Netzwerken – Konzepte und Praktiken (Wiesbaden: West-deutscher Verlag, 2000).
- Sydow, J, and B. van Well, 'Wissensintensiv durch Netzwerkorganisation – Strukturationstheoretische Analyse eines wissensintensiven Netzwerkes' in J Sydow (ed), Management von Netzwerkorganisationen. Beiträge aus der Managementforschung (Wiesbaden: Gabler, 2010).
- The global oil and gas industry association for environmental and social issues and The Danish Institute for Human Rights, 'Integrating human rights into environmental, social and health impact assessments. A practical guide for the oil and gas industry' (2013) [Online], Available from: <http://www.ipieca.org/news/20131206/integrating-human-rights-environmental-social-and-health-impact-assessments> [2014, August 07].
- Turner, J H, 'The Theory of Structuration' (1986) 91 American Journal of Sociology 969.
- United Nations, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: Guiding principles on business and human rights: Implementing the United Nations Protect, respect and remedy framework' (2011), General Assembly A/HRC/17/31, United Nations, Human Rights Council, 17th Session, March 2011.
- United Nations Development Program, 'Capacity Development of the National Human Rights Commission – CDNHRC (2002–2008)' [Online] Available from: [http://www.np.undp.org/content/dam/nepal/docs/projects/UNDP\\_NP\\_SCNHRC%20project%20document.pdf](http://www.np.undp.org/content/dam/nepal/docs/projects/UNDP_NP_SCNHRC%20project%20document.pdf) (PDF, 2,7 MB, not barrier-free) [2014, August 13].
- Windfuhr, Michael, 'Wirtschaft und Menschenrechte als Anwendungsfall extraterritorialer Staatenpflichten'. In: Zeitschrift für Menschenrechte, Jhrg. 6 2012, Nr. 2, Wochenschau Verlag



## 6

# Annex: Consultations

The paper builds on a series of consultations the German Institute for Human Rights held with regional NHRI networks in Africa, Latin America, and Asia. The input gathered from the exchange of experiences, best practices, and further recommendations has served as the basis for the practical and theoretical reflections presented in this study. The degree of NHRI cooperation within different arenas varies from region to region.

Accra: On 28 November 2013, DIMR participated in the Dialogue on the National Action Plans (NAPs) Project with members of the Network of African National Human Rights Institutions (NANHRI) in Accra, Ghana, as part of the 9th Biennial Conference on the theme of "Business and Human Rights: Challenges, Opportunities, and the Role of National Human Rights Institutions (NHRIs)." The Dialogue involved over 50 NHRI representatives from across the African region and was part of a series convened by the International Corporate Accountability Roundtable (ICAR) and the Danish Institute for Human Rights (DIHR) to gather valuable inputs and recommendations from experts and key stakeholders. The DIMR organized a workshop on future forms of cooperation between national human rights institutions in the area of business and human rights. Representatives of the national human rights institutions of Morocco, Sierra Leone, Malawi, and South Africa presented cases in which transnational cooperation with European human rights institutions would have contributed to efficient case management e.g. as they involved German businesses. The workshop proposed a series of possible areas of cooperation such as the exchange of crucial information on business entities and their activities, the joint development of standards and methods concerning risk analysis and the evaluation of human rights impacts of businesses, and the empowerment of civil society.

Bogotá: A second workshop on possible venues of cooperation between NHRI in the area of business and human rights took place with the Network of Nation-

al Human Rights Institutions in the Americas in Bogotá, Colombia, on March 18th 2014. Embedded in consultations on the NAPs, the workshop offered a discussion forum to the representatives of the NHRIs of Venezuela, Chile, Paraguay, and Colombia who emphasized the need for cooperation in the following areas: communication and exchange of information between home- and host-state NHRIs, capacity-building and training on human rights issues within business-related activities particularly for state-owned corporations, and regional exchange of experiences and best practices. The chairman of the network, Larry Devoe, underlined the importance of transnational cooperation of NHRIs which is still in its infancy stage. The issue will remain on the network's agenda.

Delhi: A final workshop was conducted in April 2014 at O.P. Jindal Global University in Sonapat, India. The results of the workshop clearly indicated that NHRIs maintain a well-established network of regional cooperation. Accords between Afghanistan, India, and Bangladesh provide for capacity-building concerning the joint management of complaint mechanisms and information exchange on special issues like the human rights of women and children. The South-East Asia National Human Rights Institutions Forum (SEANF), a sub-network of the Asia Pacific Forum of National Human Rights Institutions (APF), serves as an example for an institutionalized cooperation of NHRIs addressing the human rights impacts of business-related activities. The workshop's participants from Afghanistan, Australia, Bangladesh, India, the Republic of Korea, Malaysia, Mongolia, Myanmar and Thailand nevertheless stressed the importance of further cooperation: Joint monitoring and enhanced coordination of NHRIs from home and host states were mentioned as being of particular relevance. Awareness-raising of government officials on the human rights implications of public policies and the exchange of best practices are seen as further topics on which cooperation should be deepened. Civil society organizations broadly welcomed and supported the process of NHRI cooperation on the conference.







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